

majority of the Seven Judges in *Rosie v. Mackay* held that the whole matter was one of statute; that the statute did not give any warrant for resorting either to the device of the penny or to any other equivalent course, and that therefore the arbiter was bound in such cases to end the compensation. It was attempted to appeal *Rosie v. Mackay* to the House of Lords (1912 S.C. (H.L.) 7), but the attempt failed, as it was bound to do, because that case arose under the Act of 1897, which did not allow appeals from Scotland—though it did allow English appeals—in cases of this sort to the House of Lords.

If the important case of *Rosie v. Mackay* had been brought under the notice of the noble and learned Lords in *Taylor's* case, I do not doubt that their Lordships, if they were to arrive at a conclusion adverse to the opinion of the majority of the Scottish Judges, would have expressed in reasoned language and with some measure of argument their grounds for differing from and overruling those opinions, and we should have stood in a more definite and satisfactory state of knowledge than we are in at present. *Rosie's* case has not been formally overruled, but whether or not it is to be treated as impliedly overruled, we have, at all events, in *Taylor's* case, opinions pronounced (*obiter*, it may be) by the noble and learned Lords to the effect that a resort to some means of keeping matters open is competent, and I think, with your Lordship, that we ought to respect and give effect to those opinions, whether they are *obiter* or whether they are not.

Now we must, I apprehend, assume that the learned arbiter in this case, when he decided the question, took *Rosie v. Mackay* to be law, as it certainly then was, and therefore felt that he had no alternative except to end the compensation, whatever view he might have been inclined otherwise to entertain. In that state of matters I agree that the proper course for us is to remit the matter to the learned arbiter in order that he may have an opportunity of reconsidering the question in the light of the opinions subsequently pronounced by the House of Lords in *Taylor's* case. It is possible—it may be more than possible—that he will arrive at the same conclusion as he did before, but the point that is important is that he should have an opportunity of exercising the discretion which he must have thought he had not, but which it appears that in law he had. Other topics were touched on during the debate, but I think the one with which I have dealt is the only one which arises effectually upon the case as stated and upon which there is any necessity to pronounce an opinion. I agree, therefore, that without answering the questions as they are put—and I think they are badly stated—we should remit to the learned arbiter for the purpose that your Lordship has indicated and in which I agree.

LORD SALVESEN and LORD GUTHRIE concurred.

The Court found it unnecessary to answer the questions, remitted to the arbitrator to consider the opinions expressed by the House of Lords in the case of *Taylor v. London and North-Western Railway Company*, [1912] A.C. 242, and thereafter to pronounce such findings as might to him seem just.

Counsel for the Appellant—T. B. Morison, K.C.—Aitchison. Agents—Balfour & Manson, S.S.C.

Counsel for the Respondents—Cooper, K.C.—E. O. Inglis. Agent—James Watson, S.S.C.

Friday, June 21.

FIRST DIVISION.

(EXCHEQUER CAUSE.)

THE GRAND LODGE OF ANCIENT, FREE, AND ACCEPTED MASONS OF SCOTLAND v. INLAND REVENUE.

Revenue—Corporation Duty—Exemptions—Charitable Purpose—Customs and Inland Revenue Act 1885 (48 and 49 Vict. cap. 51), sec. 11, sub-sec. (3).

By sec. 11 of the Customs and Inland Revenue Act 1885 a duty is imposed upon the annual value, income, or profits of property belonging to any body, corporate or unincorporate, subject to an exemption in favour of "(3) Property which, or the income or profits whereof, shall be legally appropriated and applied for . . . any charitable purpose. . . ."

A masonic Grand Lodge held and administered certain funds known as the Fund of Scottish Masonic Benevolence, the Annuity Fund, and the Metropolitan District Benevolent Fund. The funds, which were directed to be kept separate from the other funds of the Lodge, were mainly derived from the annual contributions of office-bearers and members, registration fees of entrants, collections made in the daughter lodges, and voluntary donations and subscriptions. The first of the three funds mentioned was by the constitution and laws of the lodge solely devoted to purposes of benevolence, the principal beneficiaries being such poor brethren as were registered members of Grand Lodge, and the widows, parents, and children of such members. In the case of the Annuity Fund the beneficiaries were such master masons as were registered in the books of Grand Lodge, and the parents, widows, and children of such. The revenue of the remaining fund was devoted solely to the relief of poor and distressed brethren who were members of the lodge in the district, and the widows, parents, and children of such brethren, or of such others as might be deemed by the Committee to have been dependent on them. The

distribution of grants and annuities was entirely discretionary on the part of the administrative bodies, and was in no way regulated by, or commensurate with, the contributions of members. Each member of Grand Lodge, however, had a legal right to demand that the funds should be applied for the purposes laid down in the rules and for no other purpose.

In an appeal against an assessment to corporation duty under the Customs and Inland Revenue Act 1885, held that the funds in question were legally appropriated to charity within the meaning of sec. 11, sub-sec. (3), of the Act; that, accordingly, they were exempt for duty; and appeal *sustained*.

The Incorporation of Tailors in Glasgow v. Inland Revenue, May 26, 1887, 14 R. 729, 24 S.L.R. 516, and *Linen and Woollen Drapers' Institution*, (1887) 2 Tax Cas. 651, 58 L.T.R. 949, 4 T.L.R. 345, distinguished.

The Customs and Inland Revenue Act 1885 (48 and 49 Vict. cap. 51), sec. 11, enacts—“Whereas certain property, by reason of the same belonging to or being vested in bodies, corporate or unincorporate, escapes liability to probate, legacy, or succession duties, and it is expedient to impose a duty thereon by way of compensation to the Revenue: Be it therefore enacted that there shall be levied and paid to Her Majesty in respect of all real and personal property which shall have belonged to or been vested in any body, corporate or unincorporate, during the yearly period ending on the fifth day of April One thousand eight hundred and eighty-five, or during any subsequent yearly period ending on the same day in any year, a duty at the rate of five pounds per centum upon the annual value, income, or profits of such property accrued to such body, corporate or unincorporate, in the same yearly period, after deducting therefrom all necessary outgoings, including the receiver's remuneration, and costs, charges, and expenses properly incurred in the management of such property.

“Subject to exemption from such duty in favour of property of the descriptions following (that is to say)—. . . (3) Property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose, or for the promotion of education, literature, science, or the fine arts.”

On March 19, 1912, the Grand Lodge of Ancient Free and Accepted Masons of Scotland, and certain of its office-bearers on its behalf, presented a petition and appeal to the Court of Session as the Court of Exchequer in Scotland praying for recal of certain assessments for corporation duty imposed by the Commissioners of Inland Revenue, under section 11 of the Customs and Inland Revenue Act 1885, for the years 1908-9, 1909-10, and 1910 11, to the extent of £56, 1s. 3d., £73, 0s. 10d.,

and £92, 5s. 7d. respectively. Repayment of the duty was also craved.

The petition, which was presented under sec. 19 (2) of the Act, stated—“8. . . Grand Lodge is composed of certain office-bearers and others, and of the master and wardens, or, in their absence, the proxy master and proxy wardens, of each daughter lodge holding a charter from Grand Lodge. The members and office-bearers of Grand Lodge, must be master masons whose names have been recorded in the books of Grand Lodge, and who are subscribing members of a lodge holding under the Scottish constitution. By rule 74 of the constitution and laws of Grand Lodge every member of that lodge is required, in order to raise a fund for supporting the same, to pay five shillings annually besides the contribution specified in the schedule of fees contained in rule 226. By rule 77 all lodges holding of Grand Lodge are required to pay annually the fees exigible for representation in Grand Lodge. Rule 115 fixes the fee for commissions to provincial or other district grand masters at ten guineas, renewable every five years under rule 116 for a further fee of two guineas. By rule 138 the lodges in the metropolitan district are required to pay certain fees annually to Grand Committee of Grand Lodge to meet the necessary expenses of the Visitation Committee and for purposes of benevolence on behalf of applicants belonging to the said lodges, the funds so collected being administered under the direction of Grand Committee. Each daughter lodge must annually obtain a certificate from Grand Lodge under rules 151 and 152, for which the sum of five shillings is payable. By rule 164 the master of each lodge is required annually to make up a list of all intrants and affiliates in his lodge during the preceding year, and to transmit the same along with the fees to Grand Lodge. Rule 188 requires each brother at his initiation or affiliation to pay 11s. 6d. through his lodge towards the funds of Grand Lodge for recording his name and for a Grand Lodge diploma when he shall have become a master mason, and by the same rule certain other fees are fixed. By rule 189 no brother whose name has not been registered in the books of Grand Lodge shall be eligible to be a member thereof or of any provincial or district Grand Lodge, or to be a member or office-bearer in any daughter lodge, neither shall he have any claim on the Fund of Scottish Masonic Benevolence or on the Annuity Fund. Rule 226 contains a schedule of fees payable to the General Fund. . . .

“10. The petitioners and appellants hold and administer five separate funds, known respectively as the General Fund, the Metropolitan District General Fund, the Fund of Scottish Masonic Benevolence, which includes a small fund known as the Dalhousie Annuity Fund, the Annuity Fund, and the Metropolitan District Benevolent Fund. No question arises with regard to the General Fund or the Metropolitan District General Fund.

"11. The Fund of Scottish Masonic Benevolence was instituted in August 1846 and is regulated by rules 199 to 213 inclusive of the said constitution and laws. Rule 199 provides that 'this fund shall be devoted to the purposes of benevolence and shall not be appropriated to any other use.' It is raised by means of annual contributions from the office-bearers and members of Grand Lodge, the amount of these annual contributions being fixed by rule 227, one shilling from the registration fee paid for each intrant, and such voluntary donations as may from time to time be made. It is directed to be kept separate from the ordinary income of Grand Lodge, and no part of the ordinary income may be applied to benevolent purposes unless by special vote on notice given. Rule 200 earnestly recommends Provincial and District Grand Lodges and daughter lodges to contribute annually to this fund as a central fund for carrying out the benevolent objects and principles of Freemasonry, either from their lodge funds or by subscription among the brethren. The application and distribution of the fund is by rule 201 entrusted to a committee of Grand Lodge, known as the Benevolent Fund Committee. All applications for benevolence are by rule 203 required to be made through and considered by the lodge from which the petitioner derives right. Under rule 204 no petition shall be considered from any brother whose name is not registered in Grand Lodge books, nor from the parent, widow, or child of such brother, neither shall any brother have a claim to be relieved unless his name has been at least two years so registered, with certain exceptions. All applications are decided upon by the said Benevolent Fund Committee, and must be accompanied by a certificate by grand secretary of the registration of the applicant or the applicant's son, husband, or father. . . . In cases of extraordinary distress, relief may be afforded by the committee, under rule 207, to brethren or their widows or children, under the constitution of other Grand Lodges. In urgent cases grand secretary, by rule 208, may authorise grand treasurer to give such poor brethren as may appear proper objects of relief any sum not exceeding 10s. Rule 211 directs the moneys received to be from time to time paid into bank to an account kept in name of the fund. By rule 212, 10 per cent. of the moneys received is required to be annually set apart to form a sinking fund, and the yearly interest is made applicable to benevolence in addition to the annual revenue. . . . The Dalhousie Annuity Fund is a small fund consisting of the investments, representing a balance of £150, with certain accumulations of interest, of a fund subscribed in 1872 by members of Grand Lodge and other craftsmen for the purpose of presenting a bust of himself to the then Earl of Dalhousie, Past Grand Master, and which remained over after that object had been accomplished. The fund is held by the trustees of the Fund of Scottish Masonic Benevolence, and the annual proceeds are payable to the aged wife or aged widow

of a Scottish freemason by way of annuity during the pleasure of Grand Committee, in accordance with a scheme approved by Grand Committee on 27th December 1894. . . .

"12. The Annuity Fund was established by Grand Lodge in November 1888, and is regulated by rules 214 to 225 inclusive of the said constitution and laws. By rule 215 this fund is placed under the management of an Annuity Board, consisting of the members of Grand Committee and is supervised by the Finance Committee. By rule 218 the accounts of the income and expenditure of the fund are directed to be kept separate from the other funds of Grand Lodge. The fund, as provided by rule 219, consists of donations from lodges and individual brethren of one-half of the annual free income of Grand Lodge, of any other sums that Grand Lodge may see proper to grant, and of the proceeds of annual and special collections made in the daughter lodges. The donations and one-half of all sums received from Grand Lodge are reserved as capital and invested in the names of the trustees for the Fund of Masonic Benevolence or such other trustees as Grand Lodge may direct. The contributions from daughter lodges are purely voluntary and many of them make no contributions to the Annuity Fund. Further, a sum of £15,000, being the proceeds of a bazaar held in 1889 on behalf of the Annuity Fund, was in that year added to the fund, and is now represented by investments held by the Annuity Fund trustees. In addition to these sources of revenue Grand Lodge in 1908 transferred from their general funds to the Annuity Fund as a donation under rule 219 a sum of £20,000, now represented by investments held by the Annuity Fund trustees. By rule 220 the half not directed to be capitalised of the sums which have been received from Grand Lodge, and the income which has arisen from capital during the preceding year under deduction of management expenses, are directed, so far as may be required, to be distributed in annuities. Any surplus is carried forward for disposal in subsequent years. By rule 221 the Annuity Board is empowered to grant twenty annuities of £15, ten of £20, and five of £25 each in cases which are considered deserving of special treatment. All other annuities are to be of £10 each. The board is empowered to appoint annuities to be paid by instalments, and, if deemed expedient, to fix in what way they are to be applied for the benefit of the annuitants. Under rule 222 every master mason registered in the books of Grand Lodge, and every parent, widow, or child of a master mason so registered, is qualified to be placed on the roll of annuitants, but only one annuity shall be on the roll at the same time in favour of parties deriving right from the same brother. . . . Rule 223 provides that any annuity may be withdrawn at the pleasure of the board. Annuities are granted to applicants qualified as before mentioned, whether the lodge through which they claim contributes to this fund or not.

"13. The Metropolitan District Benevolent Fund is a fund devoted to the purposes of masonic benevolence connected with the metropolitan district, and is administered by a committee under a scheme which was adopted by Grand Lodge at a quarterly communication held on 1st August 1907. The fund is divided into two parts—capital and revenue. The capital consists of (1) a fund amounting to £1102, 9s. 1d. or thereby, then set aside and invested; (2) one-half of the annual levy of 5s. per intrans payable by each lodge in the district; (3) such other funds as may from time to time be added to capital as hereinafter provided; and (4) any legacy or donation of £20 or upwards unless otherwise specially stipulated by the donors. The revenue consists of (1) the interest or dividends on invested capital; (2) one-half of the said annual levy of 5s. per share; and (3) any legacy or donation under £20, unless otherwise specially stipulated by the donors. The accounts of the fund are directed to be kept separate from those of the other funds administered by Grand Lodge. Any unexpended balance on revenue account at the end of the financial year may, in the discretion of the committee, either be added in whole or part to capital or carried forward for distribution in the succeeding year. The capital of the Fund is directed to be invested in name of the trustees of the Fund of Scottish Masonic Benevolence, but as an ear-marked fund. It is further provided by the said scheme that the revenue of the Fund shall be devoted solely to the relief of worthy poor and distressed brethren who are members of lodges in the district, and of the widows, children, or parents of such brethren, or of such others as may be deemed by the committee to have been dependent on them. The Fund is distributed by a committee consisting of the members of the Visitation Committee of the Metropolitan District and the masters of the lodges in that district. Provision is made for the committee obtaining all necessary information regarding the circumstances of each case in respect of which an application for relief is made, and the committee is required to examine all applications for relief, and is empowered in its discretion to grant according to the circumstances of each case such sums as may appear necessary.

"14. No member of any lodge has any legal right to participate in the benefits of any of the said funds described in the three immediately preceding articles hereof, nor does any member on joining a daughter lodge make any direct payment to Grand Lodge in respect of these funds. The distribution of grants and annuities therefrom is entirely discretionary on the part of the administrative bodies, and is in no way regulated by or commensurate with the contributions which may have been received from the daughter lodge through which the applicant claims relief, the sole considerations in granting relief being the necessities and merits of the particular case. The said funds are administered

entirely on a charitable and benevolent system.

"15. The petitioners have, since the said Customs and Inland Revenue Act 1885 came into operation, annually furnished the Commissioners of Inland Revenue with an abstract of their, whole accounts, showing separately the accounts of their General Fund, and the Fund of Scottish Masonic Benevolence, and also of the Annuity Fund, the Metropolitan District General Fund, and the Metropolitan District Benevolent Fund, since the three last-mentioned funds respectively came into existence. No corporation duty was charged by the said Commissioners on the income of any of the said funds except the General Fund until recently, when the Commissioners for the first time intimated to the petitioners a claim for corporation duty on the income of the whole of the said funds for the years 1908-9, 1909-10, and 1910-11. The petitioners objected to this claim so far as regards the funds other than the General Fund and Metropolitan District General Fund, and maintained that the income of the said Benevolent and Annuity Funds was exempt from assessment to duty under section 11 (3) of the Act of 1885, inasmuch as these funds or the income or profits thereof were legally appropriated and applied for charitable purposes, in conformity with the respective schemes above set forth, which are strictly observed in the administration of the said funds."

The Commissioners having declined to admit the petitioners' contentions, the petitioners paid the duty under protest, and thereafter brought the present appeal.

The Commissioners lodged answers, in which they stated, *inter alia*—" . . . Each member of Grand Lodge has a legal right to demand that the funds shall be applied for the purposes laid down in the rules and for no other purpose. . . ."

Argued for petitioners and appellants—The purposes to which the funds in question were appropriated by the constitution of Grand Lodge were clearly charitable. This was not a provident society, for the payments made were in no way commensurate with the benefits received. The Committee had full power to decide who were to be beneficiaries. There was no contractual right to payment, nor was there any valuation of contingent rights to benefit, as in the case of the *Incorporation of Tailors in Glasgow v. Inland Revenue*, May 26, 1887, 14 R. 729, 24 S.L.R. 516. Moreover, in that case the fund was mainly derived from obligatory payments on entry, whereas the funds of Grand Lodge were chiefly made up of donations and voluntary contributions. The direct payments into any of these funds were made by intrans on joining a daughter lodge. The case of *Baird's Trustees v. The Lord Advocate*, June 1, 1888, 15 R. 682, 25 S.L.R. 533, which decided that the words "charitable purposes" did not include purposes of general benevolence, had been disapproved in *Commissioners of Income Tax v. Pemsel*, [1891] A.C. 531. The test of the matter was, What was the

substance of the thing—a mutual benefit society or a charity?—*Commissioners of Inland Revenue v. Forrest*, 1890, 15 A.C. 334; *in re Royal College of Surgeons of England*, [1899] 1 Q.B. 871. It was immaterial that a society was limited to a special class or to persons of a certain name provided the main object of its existence was the relief of distress. The mere fact that one or more of its purposes was the mutual benefit of its members did not deprive it of its charitable nature provided its main object was benevolent. *Society of Writers to Her Majesty's Signet v. Inland Revenue*, November 3, 1886, 14 R. 34, 24 S.L.R. 27, was referred to.

Argued for respondents—This was clearly a provident society. It was immaterial that the contributions to the central fund were not made directly, or that the benefits were not measured by the payments. Each member had to contribute to his own lodge, in return for which he acquired the right to have his case considered should he require assistance. The real object of this society was to assist those registered as masons, and not to dispense charity. In that respect it was just in the same position as the *Incorporation of Tailors (cit.)* and the *Institution of Linen and Woollen Drapers*, (1887), 2 Tax Cases, 651, 58 L.T.R. 949, 4 T.L.R. 345. These cases and the present had the following elements in common—(1) that the contributions were compulsory; (2) that the funds were appropriated to benevolent purposes; (3) that the objects of benevolence were those who had contributed or their dependants; (4) that the right to benefit lay in the discretion of those administering the funds; and (5) that no individual had any absolute right to a share of the funds. The appeal therefore ought to be dismissed.

As advising—

LORD PRESIDENT—The question raised here is as to the liability of a certain portion of the funds of the Grand Lodge of Masons in Scotland for corporation duty, which is levied in terms of the Customs and Inland Revenue Act of 1885. That Act provides for a duty being paid upon the profits accruing to corporate bodies, the view of the Act being that inasmuch as corporations never die, there ought to be some contribution taken out of the corporate property which shall more or less correspond to what is taken out of private property on the occasions of the deaths of successive holders. But there are certain exemptions made, one of which is, "property which, or the income or profits whereof, shall be legally appropriated and applied for any purpose connected with any religious persuasion, or for any charitable purpose."

Now the Grand Lodge of Masons hold various sums as corporate property. They do not deny that they are liable to pay upon certain of their funds—their General Fund and their Metropolitan District General Fund; but they claim that the funds known as the Fund of Scottish Masonic Benevolence, the Annuity Fund,

and the Metropolitan District Benevolent Fund, fall within the terms of the exemption.

I think it is clear, and indeed no argument was addressed to us against this view, that the phrase "legally appropriated and applied" does not necessarily mean that there never can be any change—or in other words that a fund once applied to a certain purpose must for ever be treated, even in spite of changes in fact, as appropriated to that purpose; but it means that the actual condition of the fund is that it is so applied, and that it is so applied in terms of either the direction of the trust or the constitution of the body which owns it. Therefore the first thing to be got at is whether any particular portion of the corporate property is really (to use more general words) dedicated to charity. Now when we take these funds, the particulars of which are set forth in the case before us, there is no doubt whatsoever that they are dedicated to charity. They are entirely used for the relief of distress in some form or other, and accordingly *prima facie* I think there would be no question but that they fall within the exemption. But then it is said that they do not really do so, because when you look into the sources from which these funds come you will find that the participants in these funds have themselves been at some period or other compulsory contributors to these funds—I mean compulsory in this sense, that they could not be in the body in which they are unless they had conformed to the rules of that body, and that the rules of that body enjoin a certain contribution to those funds. Therefore, the Crown argued, this is nothing more or less than a benefit society, and if it is a benefit society its members are really purchasing what they get, and thus the funds are not charitable funds in the proper sense of the words; and in illustration of that position they particularly relied upon the case of the *Incorporation of Tailors in Glasgow v. The Inland Revenue*, which was decided in this Court, and the case of the *Linen and Woollen Drapers*, which was decided in England.

These cases are certainly authoritative, and I am very far from seeking either to criticise or dissociate myself from anything which was said by Lord President Inglis in the case of the *Incorporation of Tailors*, and the English case really adopts in terms the opinion of the Lord President. Accordingly, if I thought this case fell within that judgment there would be no question, I think, as to the result. But upon the best consideration I can give to it I come to the conclusion that this case does not so fall. It really in the long run comes to be what may be called a question of degree. In the *Incorporation of Tailors in Glasgow* the whole contributions were made for the purpose of swelling those funds, and swelling those funds alone, which afterwards were doled out in a charitable way, and no doubt the case, so far, was a strong one, in that it settled

that the incorporation was none the less a benefit society even although the person who contributed did not necessarily get anything back, because the person asking relief always had to trust to his particular case recommending itself to the distributors of the charitable fund. No one by his contribution got a right to a return, like a person who ensures his life, and who if he pays his premiums must get the sum in his policy from the insurance company. None the less, in both these cases the whole contributions went to the funds that were afterwards distributed. In other words, the contributions were levied for no reason, so to speak, except for the founding of a benefit society fund, although the contributor was content to say, "I myself shall not have an absolute right, but you, the administering body, shall discriminate between me and my fellow-contributors as to which of us is to be relieved."

But when you come to the funds here you find that while to a certain extent they are swelled by the contributions of those who will eventually participate, that is to say, while there is nobody who takes a benefit from these funds but is in the position that he in the past, through the medium of a payment which his lodge has made in respect of him, will have contributed some minute portion of the funds from which he is taking benefit, yet none the less the great proportion of his contributions do not go to these funds at all. He does not join the Masons of a benefit society, but in order to participate in the other benefits of Freemasonry, and the actual contributions which go to the making of each particular fund are not the only sources of those funds, some of which are derived from purely charitable sources and some from other funds which are voted by the Grand Lodge. I think, therefore, it comes to be a question of degree. As an instance of a case at the opposite extreme, take a hospital (or, as we should call it in this part of the world, an infirmary). An infirmary is certainly endowed for a charitable purpose, and nobody could suppose that the exemption of its funds from corporation duty could be barred by the fact—which must almost universally be present—that some of the patients may in the past have given subscriptions to the infirmary. I think that is an extreme case at the other end of the scale, and I think this case is nearer that than it is to the case of a complete benefit society, which one had in the *Incorporation of Tailors*. Accordingly I am of opinion that the exemption applies.

I do not think it has anything to do with it, but I am not the more inclined to think my opinion is wrong when I find that for many years the Crown itself has taken that view until now, when it has apparently wakened up and tried to place a duty on these funds.

LORD KINNEAR—I agree with your Lordships.

LORD MACKENZIE—The question in this

case is whether certain funds held and administered by the Grand Lodge of Ancient Free and Accepted Masons of Scotland are liable to corporation duty under the Customs and Inland Revenue Act 1885, sec. 11. The Crown argue that they are. The petitioners and appellants maintain that these funds fall under the exemption contained in sec. 11, sub-sec. 3, which provides—[*quotes, ut supra*].

The funds which are in dispute in the present case are (1) the Fund of Scottish Masonic Benevolence, which includes a fund known as the Dalhousie Annuity Fund, (2) the Annuity Fund, and (3) the Metropolitan District Benevolent Fund. The sources from which these funds are derived and the purposes to which they are by the rules to be devoted are detailed in the petition and appeal, and there is no dispute as to the accuracy of the statements therein contained. The Fund of Scottish Masonic Benevolence is regulated by rules 199 to 213 of the Constitution and Laws of Grand Lodge. Rule 199 provides that the fund shall be devoted to the purposes of benevolence and shall not be appropriated to any other use. It is raised by means of annual contributions from the office-bearers and members of Grand Lodge, one shilling from the registration fee paid for each intransit, and such voluntary donations as may from time to time be made. It is directed to be kept separate from the ordinary income of Grand Lodge. The applications for benevolence are required to be made and considered by the lodge from which the petitioner derives right. The application and distribution of the fund is entrusted to a committee of Grand Lodge known as the Benevolent Fund Committee. No petition can be considered from any brother whose name is not registered in Grand Lodge books. There is a provision that relief may be afforded to brethren or their widows or children under the constitution of other Grand Lodges. It is not necessary to enter into detail about the Dalhousie Annuity Fund, which appears to me clearly to fall within the exemption.

The Annuity Fund is under the management of an Annuity Board consisting of members of Grand Committee. The accounts of income and expenditure of the fund are directed to be kept separate from the other funds of Grand Lodge. The sources of this fund are donations from lodges and individual brethren, one-half of the free annuity income of Grand Lodge, any other sums that Grand Lodge may see proper to grant, and the proceeds of annual and special collections made in the daughter lodges. The donations and one-half of all sums received from Grand Lodge are invested as capital. The contributions from daughter lodges are purely voluntary, and many of them make no contributions to the Annuity Fund. The investments held by the trustees include a sum of £15,000, being the proceeds of a bazaar held in 1889. In 1908 Grand Lodge transferred as a donation from their general funds a sum of £20,000. The Annuity Board is empowered

to grant a certain number of annuities. Every master mason registered in the books of Grand Lodge, and every parent, widow, or child of a master mason so registered, is qualified to be placed on the roll of annuitants. Annuities are granted to applicants duly qualified whether the lodge through which they claim contributes to this fund or not.

The Metropolitan District Benevolent Fund is devoted to the purposes of masonic benevolence connected with the metropolitan district. It is administered by a committee. The capital consists of (1) a fund amounting to £1102, 9s. 1d. or thereby, then set aside and invested; (2) one-half of the annual levy of 5s. per intransit payable by each lodge in the district; (3) such other funds as may from time to time be added to the capital as hereinafter provided; and (4) any legacy or donation of £20 or upwards unless otherwise specially stipulated by the donors. The revenue consists of (1) the interest or dividends on invested capital, (2) one-half of the said annual levy of 5s. per intransit, and (3) any legacy or donation under £20 unless otherwise specially stipulated by the donors. The accounts of the fund are directed to be kept separate from those of the other funds administered by Grand Lodge. The capital is invested in name of the trustees of the Fund of Scottish Masonic Benevolence, but as an ear-marked fund. The revenue of the fund is devoted solely to the relief of worthy poor and distressed brethren who are members of lodges in the district, and of the widows, children, or parents of such brethren, or of such others as may be deemed by the committee to have been dependent on them. Certain deductions were allowed by the Commissioners of Inland Revenue in respect of the income derived from investments representing the proceeds of a bazaar and donations from members of lodges at St John's Night collection, being property acquired from voluntary contributions within the preceding thirty years.

No corporation duty was charged on the income of any of the funds until recently, then a claim was intimated for the years 1908-9, 1909-10, and 1910-11. The Crown do not dispute that all three funds are legally appropriated to a specific purpose, nor is it denied that they are applied to the specific purposes for which they were raised. It was, however, disputed that the purpose was a charitable one, the argument being that inasmuch as the distressed persons who are relieved are themselves contributors, they merely get back their own in the shape of benefits, like the members of a benefit society. If the present case is the same as that of a benefit society, then it would fall under the decision in the *Incorporation of Tailors in Glasgow v. The Inland Revenue*, 14 R. 729, in which it was held that funds belonging to an incorporate body which were derived from the entry-moneys of members and were solely applicable as pensions to decayed members and widows of members, at the absolute discretion of certain office-bearers, were not to

be regarded as funds appropriated "to a charitable purpose" in the sense of the statute. The argument for the Crown was that that case and the present contained the following elements in common, (1) that the contributions are compulsory, (2) that the funds are appropriated to benevolent purposes; (3) that the objects of benevolence were those who had contributed or their dependants; (4) that the amount of the award, or whether there would be any award, depended upon the discretion of those administering the funds; and (5) that no individual had any absolute right to a share of the funds. The fact that the payments into the three funds in question here were not direct did not, according to the argument of the Solicitor General, make any difference.

It appears to me that the question whether a particular fund falls within the exemption of the statute or not is largely a question of degree. If the objects of the corporation are purely mutual benefit, if the individual corporators make their contributions as an investment, the case would be governed by the principles laid down in the *Incorporation of Tailors in Glasgow*. From the bye-laws which govern the Tailors Incorporation it appears that all that was left was for the mutual benefit of the individual members. So, too, in the English case *re The Linen and Woollen Drapers, &c., Institution*, 1887, 58 L.T.R. 949, which was founded upon by the Crown, it appears from the opinion of Pollock, B., that the institution was a mutual benefit society. As the rules are not printed in the report it does not appear upon what grounds this opinion was reached, but the opinion of the Lord President in the *Incorporation of Tailors in Glasgow* is referred to and adopted by Hawkins, J., in his judgment.

In the present case it does not appear to me that the contributions by individual freemasons are of such a character or amount as to necessitate the Court arriving at the conclusion that the funds in question are not legally appropriated and applied for a charitable purpose. The individual pays, not to any of these funds, but to a daughter lodge, and makes these payments in order to become a freemason. From the rules a consequence results that a small proportion of his contributions goes to these funds. That, however, is not the main object he has in view when he makes his contribution. He makes his contribution in order to share in the benefits of Freemasonry, and this is not confined to making payments from these funds. Accordingly I think that there is in the present case sufficient to distinguish it from the *Incorporation of Tailors in Glasgow* and the *Linen Drapers Institution*. It is not in my opinion necessary to make any distinction as regards the funds in question. I think all three fall within the exemption of the statute, and that therefore the prayer of the petition should be granted.

The LORD PRESIDENT stated that LORD JOHNSTON, who was not present at the advising, concurred.

The Court sustained the appeal, recalled the assessments of the Commissioners for the years 1908-9, 1909-10, and 1910-11, to the extent of £56, 1s. 3d., £73, 0s. 10d., and £92, 5s. 7d. respectively, being the extent to which the same were complained of, and ordained the Commissioners to return or repay to the petitioners the said sums, with interest thereon at 4 per cent. per annum from 5th December 1911 till the same were repaid.

Counsel for Petitioners and Appellants—Clyde, K.C. — Macmillan, K.C. — Keith. Agent—J. L. Officer, W.S.

Counsel for Respondent—Sol.-Gen. A. M. Anderson, K.C.—J. A. T. Robertson. Agent—Sir Philip J. Hamilton Grierson (Solicitor for Scotland of the Commissioners of Inland Revenue).

HIGH COURT OF JUSTICIARY.

Friday, June 21.

(Before the Lord Justice-General, Lord Kinnear, and Lord Mackenzie.)

M'INTYRE v. MORTON.

Justiciary Cases — Statutory Offence — Loitering with Intent — "Place Adjacent to a Street or Highway" — Hotel — Vagrancy Act 1824 (5 Geo. IV., cap. 83), sec. 4 — Prevention of Crimes Act 1871 (34 and 35 Vict. cap. 112), sec. 15.

The Vagrancy Act 1824, sec. 4, enacts — ". . . Every suspected person or reputed thief frequenting any river, canal, or navigable stream, dock or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, highway, or place adjacent, with intent to commit felony . . ." shall be liable to imprisonment for three months.

This Act did not apply to Scotland, but the Prevention of Crimes Act 1871, section 15, enacts—". . . The said section [i.e., section 4 of the Vagrancy Act] shall be construed as if, instead of the words 'highway or place adjacent' there were inserted the words 'or any highway, or any place adjacent to a street or highway' . . . and the provisions of the said section, as amended by this section, shall be in force in Scotland and Ireland."

Held that a hotel fronting a street was a "place adjacent to a street or highway" within the meaning of the last-quoted section.

Bertrand Morton, *alias* Edward Guerin, was charged on 20th January 1912, in the Central Police Court of Glasgow, upon a complaint at the instance of John J. M'Intyre, Procurator-Fiscal. The charge set forth that "being a suspected person and reputed thief, you did, on the 16th day of January

1912, frequent and loiter about in the Central Railway Station Hotel, being a place adjacent to a street, namely, Gordon Street, Glasgow, with intent to commit felony—*videlicet*, theft, contrary to section 4 of the Vagrancy Act 1824, as amended and extended to Scotland by the Prevention of Crimes Act 1871, sec. 15, and as further amended by the Penal Servitude Act 1891, sec. 7, whereby you are liable to imprisonment for a period not exceeding three calendar months with hard labour."

The accused, who was not represented by an agent, pled not guilty, and, no objection having been taken to the relevancy of the complaint, proof was led. At the end of the hearing the Stipendiary Magistrate (NEILSON) adjourned the case to enable the Procurator-Fiscal and any law agent who might appear for the accused to discuss a point of law and fact which had emerged. On 23rd January 1912 the Stipendiary Magistrate, having heard the Procurator-Fiscal and the law agent for the accused, found the charge not proven.

An appeal was taken by way of Stated Case.

The facts were thus set forth — "The respondent is a suspected person and reputed thief. On 16th January 1912 he frequented and loitered about in the Central Railway Station Hotel, one entrance to which is situated in Gordon Street, Glasgow. He was observed examining the hotel register, which is kept lying in the entrance hall on the ground floor, looking at the keyboard where the keys of unoccupied rooms and keys of rooms left by residents in the hotel were hung, and at the telegraph board. Several times he went up and down the main stair. He was also in the smoke-room, lounge-room, and lavatory, on the first floor or entresol of the hotel. He was in the hotel for about an hour, but he did not reside there, and did not know anyone residing there. Although while in the hotel he did no act in itself illegal or overtly indicative of an unlawful purpose, he gave no satisfactory explanation of his being in the hotel. His movements were such as to rouse the suspicions of the hotel servants, and in consequence detective-officers were sent for, and on his leaving the hotel he was followed to Dennistoun, Glasgow, where he was apprehended.

"If the *locus* of the offence is construed as within the particular provision of the statute libelled, I shall have to say that it appeared to me from respondent's proved character, and from the whole circumstances of the case, that his intent was to commit felony in some form of theft from the hotel. The matter of *locus*, however, was vital, as the competency and effect of the evidence depended upon it.

"The provision, when in its original form as part of section 4 of the Vagrancy Act, appears to have been open to the interpretation that the words *place adjacent* might mean only place adjacent, not to street or highway, but to a dock, wharf, or place of public resort. In the Prevention of Crimes Act 1871, section 15, the amendment of the